

Message Text

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 2487

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E.O. 11652: GDS

TAGS: MASS, RP

SUBJECT: BASE NEGOTIATIONS - LABOR PROVISIONS

REF: STATE 39199

1. THE INDIRECT HIRE CONCEPT IS ONE OF THE MOST IMPORTANT ELEMENTS IN THE DRAFT BASING PACKAGE WE BELIEVE WILL BEST PRESERVE OUR LONG TERM MILITARY REQUIREMENTS HERE. WE VIEW THE INDIRECT HIRE CONCEPT PARTICULARLY IMPORTANT BECAUSE:

(A) IT HELPS DEMONSTRATE IN A DIRECT AND VISIBLE WAY PHILIPPINE SOVEREIGNTY OVER THE BASES, ONE OF THE MOST IMPORTANT REQUIREMENTS FOR AN AGREEMENT WHICH THE GOP WILL ACCEPT AND WHICH WILL ENDURE;

(B) IT TAKS THE U.S. OUT OF THE MIDDLE ON LABOR DIS-PUTES. IT IS EASY TO FORGET THE STRIKES AND TURMOIL WHICH MARKED LABOR RELATIONS IN THE PHILIPPINES, INCLUDING AT THE BASES, PRIOR TO MARTIAL LAW. IF THE MARTIAL RESTRICTIONS LAW ON STRIKES WERE RELAXED THE CURRENT CALM COULD DISSIPATE AND WE COULD AGAIN BE DIRECTLY INVOLVED IN LABOR PROBLEMS AT THE BASES. THERE ARE CLEAR ADVANTAGES IN GETTING OUT OF THE MIDDLE AS OUR EXPERIENCE WITH INDIRECT HIRE ARRANGEMENTS IN JAPAN AND SPAIN WOULD SEEM TO DEMONSTRATE.

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(C) IT PROVIDES ONE OF THE MOST IMPORTANT MECHANISMS THROUGH WHICH WE CAN PASS THE MANAGEMENT, SERVICE AND OTHER PAYMENTS WHICH WILL PROVIDE THE GOP, SPECIFICALLY THE AFP, WITH THE QUID PRO QUO WE ARE INCREASINGLY UNABLE TO DELIVER THROUGH RENT, MAP OR OTHER FIXED ANNUAL PAYMENT.

2. THE PROPOSED TEXT OF THE PROCEDURAL ANNEX VII IS PROVIDED BELOW. LABOR EXPERTS AT SUBIC AND CLARK ASSISTED IN THE PREPARATION OF THIS LANGUAGE WHICH CLOSELY PARALLELS THE LABOR ANNEX IN THE SPANISH AGREEMENT. IT IS UNDERSTOOD THAT PROCEDURAL ANNEX VII (BELOW) WOULD BE BACKED UP BY DETAILED LABOR REGULATIONS.

3. FOLLOWING IS EMBASSY PROPOSAL FOR PROCEDURAL ANNEX VII; LABOR ARRANGEMENTS:

QUOTE: "1. THE TERM 'LOCAL LABOR PERSONNEL' USED IN THIS ANNEX MEANS PERSONS, OTHER THAN UNITED STATES PERSONNEL IN THE PHILIPPINES, ENGAGED IN LABOR ACTIVITY TO MEET THE NEEDS OF THE UNITED STATES FORCES IN PHILIPPINE MILITARY INSTALLATIONS, INCLUDING THE ACTIVITIES REFERRED TO IN PROCEDURAL ANNEX V OF THIS AGREEMENT.

"2. THE EMPLOYMENT RELATIONSHIP TO WHICH THIS ANNEX REFERS SHALL BE BETWEEN THE LOCAL LABOR PERSONNEL AND THE AFP WHO HIRE THEM, ALTHOUGH THE ASSIGNMENT OF SUCH PERSONNEL TO THEIR JOBS AND THEIR DIRECTION SHALL BE THE RESPONSIBILITY OF THE UNITED STATES FORCES.

"A. ON THE DATE OF CONTRACT REPLACEMENT PROVIDED FOR IN PARAGRAPH I OF ANNEX D TO ARTICLE I OF THIS AGREEMENT, THE EMPLOYMENT RELATIONSHIP OF LOCAL LABOR PERSONNEL SHALL BE ADAPTED TO THE TERMS OF THIS ANNEX.

"B. THE LABOR REGULATIONS APPLICABLE TO LOCAL LABOR PERSONNEL OF THE AFP HEREINAFTER REFERRED TO AS "MILITARY LABOR REGULATIONS" WILL GOVERN THE TERMS AND CONDITIONS OF EMPLOYMENT OF LOCAL LABOR PERSONNEL, EXCEPT WITH REFERENCE

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TO THE MODIFICATIONS OR LATERATIONS ESTABLISHED IN SPECIFIC PROVISIONS OF THIS ANNEX AND OTHER REGULATIONS APPLICABLE TO EMPLOYEES OF THE GOVERNMENT OF THE PHILIPPINES.

"C. EACH MILITARY INSTALLATIONS UTILIZING LOCAL LABOR PERSONNEL WILL HAVE A PERSONNEL LIST REFLECTING THE NEEDS AND DATA CONCERNING LOCAL LABOR PERSONNEL REQUIREMENTS. THE LIST WILL INCLUDE ADMINISTRATIVE PERSONNEL WHOSE SERVICES ARE USED BY THE UNITED STATES FORCES TO CARRY OUT THE RESPONSIBILITIES OF THE SAID FORCES UNDER THIS ANNEX. TO FACILITATE THE PREPARATION OF THE SAID LISTS, THE UNITED STATES FORCES WILL, NO LATER THAN 60 DAYS AFTER THE ENTRY INFO FORCE OF THIS AGREEMENT, PROVIDE TO THE AFP A LISTING BY CATEGORIES OF THE NUMBER OF POSITIONS UTILIZED AT EACH INSTALLATION ON THE SAID DATE OF ENTRY INTO FORCE.

"3. THE AFP WILL BE RESPONSIBLE FOR THE FOR THE EMPLOYMENT OF LOCAL LABOR PERSONNEL, AS PROVIDED IN ANNEX D, ARTICLE I AND THIS ANNEX, AND AS THE EMPLOYER WILL EXERCISE THE FOLLOWING RIGHTS AND RESPONSIBILITIES:

"A. DEVELOP JOINTLY WITH THE UNITED STATES FORCES, THROUGH THE MUTUAL DEFENSE BOARD, THE TERMS, CONDITIONS, AND RULES RELATING TO THE SELECTION, UTILIZATION, AND SEPARATION OF LOCAL LABOR PERSONNEL BY THE UNITED STATES FORCES.

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"B. ISSUE CALLS FOR AND REFER TO THE UNITED STATES FORCES PERSONS CONSIDERED QUALIFIED FOR APPOINTMENT, AS REQUESTED BY THE UNITED STATES FORCES. TO ASSIST THE UNITED STATES FORCES IN SELECTION OF PERSONNEL, A SUFFICIENT NUMBER OF QUALIFIED APPLICANTS TO MEET THE NEEDS OF THE UNITED STATES FORCES WILL BE REFERRED FOR EACH VANCE POSITION.

"C. EFFECT APPOINTMENTS FOR UTILIZATION BY THE UNITED STATES FORCES, TERMINATIONS OF SUCH UTILIZATION, AND OTHER APPROPRIATE PERSONNEL ACTIONS AS REQUESTED BY THE UNITED STATES FORCES, IN ACCORDANCE WITH THE MILITARY LABOR REGULATIONS.

"D. EFFECT DISCIPLINARY ACTIONS AS INITIATED BY THE UNITED STATES FORCES, IN ACCORDANCE WITH THE MILITARY LABOR REGULATIONS.

"E. PAY LOCAL LABOR PERSONNEL, IN ACCORDANCE WITH PAYROLLS PREPARED BY THE UNITED STATES FORCES IN ADVANCE OF THE REGULATION PAYDAYS, THEIR SALARIES, WAGES, AND ANY OTHER EMOLUMENTS TO WHICH THEY MAY BE ENTITLED. THE AFP WILL INFORM THE UNITED STATES FORCES OF ALL DEDUCTIONS REQUIRED BY PHILIPPINE LAW WHICH WILL BE REFLECTED IN THE SAID PAYROLLS.

"4 IN ORDER TO GUARANTEE GREATER EFFICIENCY IN THE LABOR RELATIONSHIP, AND AS THE USER OF THE SERVICES OF LOCAL LABOR PERSONNEL, THE UNITED STATES FORCES WILL EXERCISE THE FOLLOWING RIGHTS AND RESPONSIBILITIES:

"A. DETERMINE, IN ACCORDANCE WITH THEIR NEEDS, MISSION, FUNDING AVAILABILITIES, WORK REQUIREMENTS, AND METHODS OF WORK ACCOMPLISHMENT, THE NUMBER, TYPES, LEVELS OF COMPENSATION INCLUDING BONUSES AND FRINGE BENEFITS, AND QUALIFICATION REQUIREMENTS OF POSITIONS TO BE FILLED BY LOCAL LABOR PERSONNEL, AND TRANSMIT SUCH DETERMINATIONS TO THE AFP. THE LEVEL OF COMPENSATION FOR A POSITION SHALL NOT BE LESS THAN AS ESTABLISHED FOR SIMILAR POSITIONS IN THE AFP AND IN ANY EVENT NO LESS THAN SUCH LOCAL LABOR PERSONNEL ARE EARNING ON THE DATE THIS AGREEMENT GOES INTO FORCE.

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"B. DETERMINE THE SELECTION FOR APPOINTMENT AS LOCAL LABOR PERSONNEL, ON A TEMPORARY OR INDEFINITE BASIS FROM AMONG THE PERSONS REFERRED BY THE AFP.

"C. NOTIFY THE AFP OF THE SELECTION OF PERSONNEL, AND REQUEST APPOINTMENT AND DETAIL OF PERSONS SO SELECTED TO THE UNITED STATES FORCES.

"D. DETERMINE, IN ACCORDANCE WITH THE MILITARY LABOR REGULATIONS, REASSIGNMENTS, PROMOTIONS, AND TERMINATIONS OF UTILIZATION AND NOTIFY THE AFP THEREOF.

"E. EXERCISE DISCIPLINARY AUTHORITY FOR MINOR FAULTS AS DEFINED IN THE MILITARY LABOR REGULATIONS, AND REPORT THE STEPS TAKEN TO THE AFP.

"F. INITIATE DISCIPLINARY ACTIONS FOR OTHER THAN MINOR FAULTS, CONDUCT PRELIMINARY PROCEEDINGS TO VERIFY THE FACTS, FORWARD A RECORD OF SUCH PROCEEDINGS TO THE AFP, PARTICIPATE IN THE FORMAL PROCEEDINGS AND PROPOSE AN APPRO-

PRIATE RESOLUTION TO THE PHILIPPINE AUTHORITIES IN ACCORDANCE
WITH AGREED PROCEDURES.

"G. ORGANIZE THE WORK OF LOCAL LABOR PERSONNEL IN
ORDER TO TAKE CARE OF THE NEEDS OF THEIR OWN SERVICE MOST
EFFICIENTLY, SPECIFYING WORKING SCHEDULES AND VACATION PERIODS.
IN NO CASE MAY VACATION PERIODS BE LESS THAN THE MINIMUMS
REQUIRED BY PHILIPPINE LAWS.

"H. ADOPT PERTINENT MEASURES FOR THE TRAINING AND
DEVELOPMENT OF LOCAL LABOR PERSONNEL.

"I. PREPARE LOCAL LABOR PERSONNEL PAYROLLS AND
SUBMIT THEM IN DUE TIME TO THE AFP.

"JM REIMBURSE THE AFP FOR ALL PAYMENTS MADE AS
PROVIDED FOR IN ARTICLE I, ANNEX D, PARA E OF THIS AGREEMENT
AND FOR RELATED ADMINISTRATIVE COSTS AS MAY BE AGREED UPON
BY THE MUTUAL DEFENSE BOARD.

"K. TAKE WHATEVER ACTIONS ARE NECESSARY IN THE EVENT
OF AN EMERGENCY, CONSULTING IN ADVANCE WHENEVER PRACTI-
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CAL WITH THE AFP.

"5. THE UNITED STATES FORCES MAY DIRECTLY RECRUIT AND
SELECT U.S. CITIZENS FOR APPOINTMENT TO POSITIONS HAVING A
SPECIALIZED MANAGEMENT OR SECURITY REQUIREMENT, AND IN COOR-
DINATION WITH THE AFP, TO POSITIONS IN LABOR SHORTAGE CATE-
GORIES.

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"6. WHEN THE SERVICE NEEDS OF THE UNITED STATES FORCES IN THE PHILIPPINES REQUIRE A REDUCTION IN FORCE OF LOCAL LABOR PERSONNEL, THE MILITARY AUTHORITIES OF THE UNITED STATES SHALL, IN ADVANCE, SO INFORM THE AFP, WHO SHALL TAKE ACTION TO EFFECT TERMINATIONS OF UTILIZATION AS REQUESTED BY THE UNITED STATES FORCES.

"A. LOCAL LABOR PERSONNEL WHOSE UTILIZATION IS TERMINATED BY A REDUCTION IN FORCE SHALL BE ENTITLED TO SEVERANCE PAY FOR PERMANENT TERMINATION OF SERVICES AS PROVIDED IN THE MILITARY LABOR REGULATIONS WHICH AMOUNT SHALL BE PAID BY THE AFP WHO SHALL BE REIMBURSED BY THE UNITED STATES MILITARY AUTHORITIES. THE SAME PROCEDURES SHALL APPLY IN THE CASE OF TERMINATION OF UTILIZATION OF LOCAL LABOR PERSONNEL BECAUSE OF THE EXPIRATION OF THIS AGREEMENT.

"B. FOR THE PURPOSE OF DETERMINING THE SEVERANCE PAY REFERRED TO IN PARAGRAPH 6A OF THIS ANNEX, ONLY CONTINUOUS EMPLOYMENT BY THE UNITED STATES FORCES IN THE PHILIPPINES PRIOR TO THE DATE OF CONTRACT REPLACEMENT PROVIDED FOR IN ANNEX D OF ARTICLE I OF THIS AGREEMENT, FOR WHICH NO PREVIOUS SEVERANCE PAY HAS BEEN GRANTED, AND SERVICE RENDERED AS LOCAL LABOR PERSONNEL UTILIZED BY THE UNITED STATES FORCES SUBSEQUENT TO ENTRY INTO FORCE OF THIS AGREEMENT SHALL BE CREDITED.

7. THE PROVISIONS OF THIS ANNEX SHALL NOT APPLY TO:
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"A. FUNCTIONS OR ACTIVITIES OF THE EMBASSY OF THE UNITED STATES, THE UNITED STATES INFORMATION AGENCY, THE OFFICE OF THE DEFENSE ATTACHE OF THE UNITED STATES, THE JOINT UNITED STATES MILITARY ADVISORY GROUP (JUSMAG), OR THE UNITED STATES GOVERNMENT AGENCIES IN THE PHILIPPINES NOT ASSOCIATED WITH THE UNITED STATES FORCES.

"B. EMPLOYEES OF CONTRACTORS OR CONCESSIONAIRES PERFORMING WORK IN THE PHILIPPINES FOR THE UNITED STATES FORCES.

"C. EMPLOYEES HIRED PRIVATELY BY MEMBERS OF THE UNITED STATES PERSONNEL OR THE CIVILIAN COMPONENT IN THE PHILIPPINES.

"D. EMPLOYEES REFERRED TO IN SUBPARAGRAPH 7B ABOVE, EXCEPT THOSE WHO ARE NATIONALS OF OR ORDINARILY RESIDENT IN THE UNITED STATES, AND THE EMPLOYEES REFERRED TO IN SUBPARAGRAPH 7C ABOVE SHALL BE SUBJECT TO THE PHILIPPINE LABOR CODE.

"E. PURSUANT TO ARTICLE I, ANNEX D, THE GOVERNMENT OF THE UNITED STATES AND ITS ARMED FORCES AND THEIR ORGANIZATIONS, UNITS, AGENCIES OR INSTRUMENTALITIES AND U.S. CIVILIAN COMPONENT MEMBERS SHALL NOT BE SUBJECT TO PHILIPPINE COURT ACTIONS INSTITUTED BY LOCAL LABOR PERSONNEL, OR BY ANY PERSON PREVIOUSLY EMPLOYED BY THE UNITED STATES FORCES, BASED ON CLAIMS ARISING FROM THEIR EMPLOYMENT OR FROM THEIR UTILIZATION PURSUANT TO THE PROVISIONS OF THIS ANNEX.

"8. IN REGARD TO THE LABOR RELATIONSHIP COVERED BY THIS ANNEX, THE MUTUAL DEFENSE BOARD SHALL EXERCISE THE FOLLOWING AUTHORITY:

"A. PROPOSE TO THE PHILIPPINE GOVERNMENT SUCH RULES AS IT DEEMS PERTINENT FOR ADAPTING THE MILITARY LABOR REGULATIONS, AND THEIR SUPPLEMENTARY RULES, TO THE SPECIAL CONDITIONS OF EMPLOYMENT OF LOCAL LABOR PERSONNEL; THESE RULES SHALL BE SUFFICIENTLY PRECISE TO GUARANTEE UNITED STATES PARTICIPATION IN LABOR CASES FOR THE IMPOSITION OF DISCIPLINARY SANCTIONS ON LOCAL LABOR PERSONNEL.

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PLINARY SANCTIONS ON LOCAL LABOR PERSONNEL.

"B. TO CONSULT AND REPORT TO THE AFP AUTHORITIES PRIOR TO THE RENDERING OF ADMINISTRATIVE DECISIONS PERTAINING TO MONETARY AND ADMINISTRATIVE CLAIMS INVOLVING LOCAL LABOR PERSONNEL AND ARISING FROM THEIR UTILIZATION BY UNITED STATES FORCES.

"C. TO CONSULT AND AGREE ON THE CONSEQUENCES OF FINAL DECISIONS BY THE PHILIPPINE AUTHORITIES REGARDING CLAIMS REFERRED TO IN PARAGRAPH 8B. SUCH CONSEQUENCES MAY INCLUDE SHARING BY THE PHILIPPINES AND THE UNITED STATES OF THE PAYMENT OF MONETARY AWARDS, AND APPROPRIATE RESOLUTION OF QUESTIONS RELATING TO THE FURTHER UTILIZATION BY THE UNITED STATES FORCES OF LOCAL LABOR PERSONNEL AFFECTED BY SUCH DECISIONS.

"9. THE GOVERNMENT OF THE PHILIPPINES SHALL ADOPT THE NECESSARY ADMINISTRATIVE MEASURES IN CONSULTATION WITH THE U.S. FORCES TO IMPLEMENT THE PROVISIONS OF THIS ANNEX. UNLESS OTHERWISE PROVIDED HEREIN, SUCH

MEASURES SHALL ENTER INTO FORCE ON THE DATE OF CONTRACT REPLACEMENT PROVIDED FOR IN ANNEX D OF ARTICLE I OF THIS AGREEMENT.

"10. THE LABOR RELATIONSHIP OF LOCAL LABOR PERSONNEL PRESENTLY EMPLOYED BY THE UNITED STATES FORCES IN ACCORDANCE WITH THE PROVISIONS OF THE BASE LABOR AGREEMENT OF 1968, SHALL TERMINATE AFTER ENTRY INTO FORCE OF THIS AGREEMENT AS PROVIDED IN ANNEX D, ARTICLE I." UNQUOTE.

4. COMMENT: WHILE EMBASSY ESSENTIALLY USED THE FORMAT OF THE SPANISH AGREEMENT FOR THE ABOVE LABOR PROCEDURAL ANNEX, THE LANGUAGE HAS BEEN ESPECIALLY TAILORED TO COVER THE PHILIPPINE LABOR ENVIRONMENT TAKING INTO ACCOUNT THE EXPERIENCE OF THE CIVILIAN PERSONNEL OFFICE AT EACH BASE. SPECIFICALLY, THE ABOVE PREPARED ANNEX INSURES THAT U. S. FORCES ARE SOLELY RESPONSIBLE FOR DETERMINING PAY AND BENEFITS AND ESTABLISHING WORK REQUIREMENTS AND METHODS OF WORK ACCOMPLISHMENT (PARA 4A). THIS WILL RETAIN THE OPTION THE BASES BELIEVE NECESSARY TO ALLOW SEPARATE "CONTRACT OUT" IF DEEMED DESIRABLE OR
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NECESSARY. THIS PROVISION, ALONG WITH PARA 5 WILL ALSO INSURE THE RIGHT OF U.S. FORCES TO UTILIZE EITHER U.S. CIVILIANS OR MILITARY PERSONNEL TO SATISFY ANY LABOR REQUIREMENTS WHICH THE AFP IS UNABLE TO PROVIDE OR WHICH THE U.S. FORCES DETERMINE NECESSARY TO BE PERFORMED BY U.S. CITIZENS. THE BASES VIEW AS ESSENTIAL THIS RIGHT TO CONTRACT OUT AND TO UTILIZE U.S. CIVILIAN AND MILITARY PERSONNEL IN ANY INDIRECT HIRE AGREEMENT IN THE PHILIPPINES. WE RECOGNIZE THAT DEVELOPING ALL THE SPECIFIC RULES AND REGULATIONS APPLICABLE TO THE INDIRECT LABOR ENVIRONMENT MAY TAKE SOME TIME. WE HAVE TERMED THESE RULES THE "PHILIPPINE MILITARY LABOR REGULATIONS" (PMLR) AND AS AN INTERIM MEASURE WOULD ATTEMPT TO HAVE THE PRESENT CINCPACPHIL FILIPINO EMPLOYEE PERSONNEL INSTRUCTIONS (FEPI) ADOPTED INITIALLY PENDING FULL DEVELOPMENT OF THE PMLR. IN THIS CONNECTION THE EMBASSY CONSIDERED WHETHER THE PHILIPPINE DEPARTMENT OF LABOR OR THE ARMED FORCES PHILIPPINES SHOULD BE THE EXECUTIVE AGENT OF THE PHILIPPINE GOVERNMENT TO ADMINISTER THE INDIRECT-HIRE AGREEMENT. FROM THE U.S. POINT OF VIEW THERE WAS LITTLE QUESTION THAT THE AFP WOULD BE PREFERABLE AND SO SUCH WAS DESIGNED IN ANNEX D. IT IS BELIEVED THAT A CLOSE STRUCTURAL RELATIONSHIP WITH THE AFP IS ESSENTIAL TO THE ACCEPTABILITY AND DURABILITY OF THE OVERALL AGREEMENT. THE INDIRECT HIRE PROCEDURE PROVIDES ONE OF THE MOST IMPORTANT MECHANISMS FOR PASSING TO THE AFP THE "MANAGEMENT PAYMENTS" DESIGNED TO BE A KEY ELEMENT OF THE NEW QUID PRO QUO FOR OUR CONTINUED USE OF MILITARY FACILITIES HERE. END COMMENT.

5. THIS MESSAGE HAS BEEN SENT IN STADIS CHANNELS IN
DEFERENCE TO REFTEL. HOWEVER, IT IS OBVIOUSLY RELEASABLE
TO ALL INTERESTED AGENCIES AND CAN BE DESCRIBED AS EMBASSY
DRAFT, WHICH INCORPORATES ASSISTANCE FROM LABOR EXPERTS
AT BASES IN PHILIPPINES.
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